

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 546 of 1985

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For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Heirs of AHMEDKHAN RAHEMKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioners

Mr.M.R. Raval, A.G.P. for respondents nos.1 & 2
instructed by M/S MG DOSHIT & CO for Respondent No.

1.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/10/96

ORAL JUDGEMENT :

This petition under Article 226 of the Constitution was initially filed by Ahmedkhan Rakemkhan Pathan, a retired Watchman/Kotwal praying for directions for fixation of pension and appropriate reliefs. During the pendency of the petition the original petitioner expired on 24.3.1987. The heirs of the deceased, being the widow and the son of the deceased, have, therefore, been brought on record as per this Court's order dated 2.3.1990 in Civil Application no.368 of 1990.

2. The deceased was initially appointed as Village Kotwal / Village Police by an order dated 31st July 1956, Annexure 'A' to the petition. The appointment was made by the Deputy Collector (West), Jamnagar. Subsequently, the petitioner was appointed on the post of Watchman under Mamlatdar, Jam Jodhpur, as per the order dated 15th February 1962 issued by the Collector, Jamnagar at Annexure 'B' to the petition. It appears that the deceased completed the age of 60 years and was, therefore, required to be superannuated with effect from 21st April 1969. However, as per the stand taken by the Collector in his letter dated 14th February 1978 before the State Government (Annexure 'G' to the petition), the deceased was continued even beyond 21st April 1969 through oversight. The deceased ultimately came to be superannuated with effect from 31.3.1972 (Annexure 'C' to the petition). Thereafter also the petitioner came to be employed as a Village Kotwal with effect from 2.9.1972. The said appointment was made by the Mamlatdar, Jam Jodhpur. Ultimately, the deceased was relieved from the post of Kotwal with effect from 31st October 1979.

3. The deceased was, however, not paid any pension nor was even fixation of pension made on the ground that the deceased had not rendered requisite pensionable service.

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Different periods during which the deceased had put in service were as under :

Period	Duration		Capacity
	Years	Months	
(i)	31.07.1956	to 5	6 1/2 as Village Police
	14.02.1962		
(ii)	15.02.1962	to 7	2 as Watchman (till
	21.04.1969	completion	of
		age of 60 years).	
(iii)	22.04.1969	to 2	11 as Watchman and
	22.03.1972	as Peon.	
(iv)	02.09.1972	to 7	2 as Peon
	31.10.1979		

4. The stand of the respondents is that the period between 15.2.1962 and 21.4.1969 (7 years and 2 months) is the only period which can be taken into account for the purpose of fixing pension, but the said period fell short of the minimum requisite period of 10 years pensionable service. Hence the deceased was not entitled to receive any pension.

5. According to the Collector, Jamnagar, he had sent proposal dated 14.2.1978 (Annexure 'G' to the petition) requesting the State Government to treat the period from 22.4.1969 to 22.3.1972 (2 years, 11 months) as period of extension so that the service put in by the deceased would be more than the requisite minimum pensionable service period of 10 years.

6. At the hearing of this petition Mr.M.R. Raval, learned AGP has opposed the petition. However, there is no affidavit-in-reply filed on behalf of the respondents, but it has been contended that since the deceased had completed 60 years of service on 21.4.1969, the service rendered by him thereafter cannot be taken into account for the purpose of computing pensionable service. For the period prior to 20.2.1962, according to Mr.Raval, the deceased was discharging duties as a Kotwal which was a part time post; it could not, therefore, be taken into account for computing the pensionable service in view of the Government Resolution dated 20.3.1979, which provided that Kotwals retiring prior to 1.3.1979 were not entitled to receive pension.

7. Mr.P.H. Pathak, learned advocate for the petitioner submitted that respondents had clearly erred in not counting the prior period, i.e. from 31.7.1956 to 14.2.1962 as pensionable service and in support of the said contention he has strongly relied upon the decision of this Court in Special Civil Application No.1164 of 1993 rendered by a learned Single Judge on 26.3.1994. It has been held in the said decision that the aforesaid Government Resolution prescribing cut off date as 1.3.1979 was arbitrary and that the State Government and subordinate officers were required to take into consideration even the services prior to 1.3.1979 as pensionable service. In my view, the present case is squarely covered by the aforesaid decision of this Court. Hence the controversy as to whether the service rendered

by the petitioner after 21.4.1969 can be taken into account for the purpose of computing pensionable service or not pales into insignificance. Mr.Pathak, learned counsel for the petitioner fairly stated that the claim for pensionable service for the period beyond 21.4.1969 is not being pressed by him, in view of the fact that I am upholding the petitioner's contention that the services rendered by the deceased between 31.7.1956 and 14.2.1962 are required to be taken into account for the purpose of computing the pensionable service.

8. In view of the aforesaid discussion, the petition deserves to be allowed. The respondents are directed to fix within one month from today the pension of the deceased - Ahmedkhan Rahemkhan Pathan - by treating the period from 31.7.1956 to 21.4.1969 as pensionable service and to pay arrears of pension of the deceased to his heirs, namely, the present petitioners within two months thereafter. The arrears of pension shall be paid for the period from 1.11.1979 to 23.3.1987. For the subsequent period, the widow of the deceased, Smt. Rawaben shall be paid family pension in accordance with the Rules. The family pension shall be fixed within 2 months from today and the arrears thereof shall be paid within three months from today.

9. Mr.Pathak pressed for interest on the arrears of pension/family pension. As far as arrears of pension are concerned, the deceased himself did not approach this Court till February 1985, and the deceased was continued in service for a period of about 10 years even after completion of the age of superannuation. Hence interest at the rate of 12 per cent per annum is directed to be paid from the date of filing of the petition till the date of payment. As far as arrears of family pension are concerned, the widow of the deceased shall be paid interest at the rate of 12 per cent per annum from the due date(s) till the date of payment

10. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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